Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-609

VILLAGE OF WAITE HILL,

Plaintiff and Appellee

vs.

JOHN G. CARDWELL JR.

Defendant and Appellant

JURISDICTIONAL STATEMENT

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IN THE

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October Term, 1978

No. _____

VILLAGE OF WAITE HILL

Plaintiff and Appellee

vs

JOHN G. CARDWELL JR.

Defendant and Appellant

JURISDICTIONAL STATEMENT

To the Honorable Warren Burger, Chief Justice and to the Associate Judges of the Supreme Court of the United States of America:

John G. Cardwell Jr., Defendant and Appellant hereby petitions the United States Supreme Court to accept jurisdiction of this appeal in the above-entitled action.

(a) Hereinafter reference is made to the proceedings preceding the appeal to this Court.

This matter was heard in the Willoughby Municipal Court on February 22, 1977, before the Hon. Judge Richard A. Hoose in case number A 59712 entitled Village of Waite Hill vs Cardwell. The defendant prior to trial objected to the proceedings on the grounds that the Court's refusal to order the prosecutor to supply to defendant the response to certain interrogatories submitted by the defendant, prior to trial, deprived defendant of his right to a fair trial guaranteed by the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States and Article I Section 10 of the Constitution of the State of Ohio.

No opinion was written by the trial court and the Judgment Entry relative thereto is shown on page 12 of the Appendix.

This cause was then appealed to the Court of Appeals, Eleventh Appellate District, Lake County, State of Ohio. A trial thereof was had in case number 6-133 and on December 12, 1977, a Judgment Entry affirmed the decision of the trial court. The opinion of the majority of the Court appears on pages 16 and 17 of the Appendix and thereafter, on pages 18, 19, and 20 appears the dissenting opinion prepared by Hon. Judge Edwin T. Hofstetter.

Upon appeal to the Supreme Court of the State of Ohio, defendant's Motion to Certify was overruled, the appeal dismissed sua sponte, and the appellant's motion to reconsider was denied. No opinions were prepared by the Court and the Journal Entries are set forth on pages 25, 26, and 28 of the Appendix.

(bi)

This action is one to reverse a judgment entry dated December 17, 1977 entered by the Court of Appeals, Eleventh Appellate District for the State of Ohio, in the cause titled, the Village of Waite Hill vs John G. Cardwell Jr., in case number 6-133.

The appellant prays that this Court require the Court of Appeals to order the Village of Waite Hill to respond to certain interrogatories submitted by the defendant and thereafter remand the cause to the Willoughby Municipal Court for further proceedings according to law.

The interrogatories were submitted pursuant to the provision of Ohio Criminal Rule 16B(f) which states:

> "Upon motion of the defendant before trial the court shall order the prosecuting attorney to disclose to counsel for the defendant all evidence, known or which may become known to the prosecuting attorney, favorable to the defendant and material either to guilt or punishment. The certification and the perpetuation provisions of subsection (B)(1)(e) apply to this subsection."

These same Rules provide the purpose and construction to be given to the Rules in Rule 1B to wit:

> "These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed and applied to secure the fair, impartial, speedy and secure administration of justice, simplicity in procedure, and the elimination of unjustifiable expense and delay.".

In Ohio, as in other jurisdictions, these rights of the accused to evidence favorable to the defendant are not self executing--although perhaps they should be. To obtain the benefit of a rule of practice per-

taining to the production of favorable evidence the accused must bring himself within the terms of the Rule.

Mo. State v Kelton, 299 S.W. 2nd 493

Ohio Criminal Rule 16(F) states in pertinent parts:

> "A defendant shall make his motion for discovery within twenty-one days after arraignment or seven days before the date of trial, whichever is earlier ...."

Defendant commenced his discovery proceedings sixteen days after arraignment. Because of certain false statements made by the arresting officer in a bill of particulars ordered by the Willoughby Municipal Court it was necessary for defendant to ask certain interrogatories which were filed with the court on February 1, 1977. To suggest that because of the negligence of the arresting officer in not completing his citation of the defendant, the Village's thirty-one (31) day delay before it stated "with particularity" the point of measurement of defendant's speed and then swearing to false information necessitating a motion by defendant to require the Village of Waite Hill to answer interrogatories in the "interest of justice" it was impossible to have defendant complete his discovery proceedings allowed by Rule 16(F), appears to be an effort by the Village of Waite Hill to benefit from its own misdeeds!

(bii)

On November 21, 1977, the Court of Appeals of Ohio, Eleventh District, County of Lake, issued its Announcement of Decision in Case No. 6-133, entitled Village of Waite Hill vs John G. Cardwell Jr. Thereafter, on December 8, 1977, the Judgment Entry was filed in the journal of said court.

On December 19, 1977, defendant-appellant filed his Notice of Appeal to the Supreme Court of the State of Ohio of the entry aforesaid which had affirmed, by a 2 to 1 decision, the judgment of the trial court, the Willoughby Municipal Court in their Case No. 76-TRD-A-59712.

On January 10, 1978, a Motion to Certify and Memorandum in support thereof was filed with the Supreme Court of the State of Ohio. On March 17, 1978, the said court overruled appellant's Motion and dismissed his appeal sua sponte.

On March 29, 1978, appellant filed his Motion to Reconsider with the Supreme Court of the State of Ohio and on April 14, 1978, said Motion was denied. On May 2, 1978, a Notice of Appeal to the United States Supreme Court was filed with the Supreme Court of the State of Ohio. Thereafter, on May 12, 1978, said Notice of Appeal to this Court was also filed with the Court of Appeals, Eleventh District, County of Lake, in the State of Ohio and with the United States Supreme Court.

(b iii)

In addition to the cases hereinafter cited in (b iv) it appears the jurisdiction of this Court is authorized by supreme law of the land, the Constitution of the United States, to wit:

Article III Section I states in pertinent parts as follows:

"The judiciary power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish....."

Article III Section II states in part:

"The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, ..."

"In all cases affecting ambassadors, other public ministers and consuls and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as Congress shall make."

Amendment V of the Constitution of the United States states in part:

"No person shall be ....deprived of life, liberty, or property, without due process of law;....."

Amendment VI of the Constitution of the United States states:

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Amendment XIV, Section I states:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

It is difficult to comprehend how any accused can have a fair trial without adequate pre-trial discovery. Essential to preparation is unrestricted access to all matters within the knowledge of the prosecutor, or in the words of Criminal Rule 16B(f),

> "known or which may become known to the prosecuting attorney, favorable to the defendant and material either to guilt or punishment."

Trials are not games but a search for truth. To construe the above cited Rule in its narrow technical sense reduces this search for truth to one of mere semantics. No valid reason can be presented for denying to one accused of a crime all information available to the prosecuting attorney favorable to the defendant. Any other course of action will encourage the concealment of facts which destroy and discredit our ideals of a fair trial.

Ohio Criminal Rule 1B provides the purpose and construction to be given to the Rules. Said Rule states in pertinent parts;

> "These rules are intended to provide for the just determination of every criminal proceeding. They shall be construed and applied to secure the fair, impartial, speedy and secure administration of justice, simplicity in procedure, and the elimination of unjustifiable expense and delay."

It is difficult to imagine any procedure which is more simple and less expensive and which results in reduced delay than the use of interrogatories, as was done in this case, to ask for the required evidence favorable to the defendant.

From time to time we seem to need a reminder that the purpose of a criminal proceeding with its able prosecuting attorneys, the police powers of the government and its inexhaustible financial resources is not solely for the purpose of conviction, no matter the nature of crime, but rather a search for truth. To the extent that interrogatories as part of pre-trial discovery proceedings gives light to this search they are proper.

(b iv)

It has been said many times that State remedies must be exhausted before jurisdiction of the United States Supreme Court is invoked.

Generally, jurisdiction of the Supreme Court of the United States to review the decisions of the state courts is limited to a review of the judgments of the highest court of the State in which a decision could be had. See 28 USCA Sec. 1257. This rule does not, however, confine a review to the decisions of the highest court of the State where the highest court of the State refuses to review the decision of an inferior or intermediate court. In such circumstances the United States Supreme Court may review the judgment of such lower court if a federal constitutional question is involved.

> Chicago & E.I. R. v Industrial Commission of Illinois
> 52 S. Ct. 151, 284 US 296, 76 L. Ed. 304
>
> Randall v Board of Com'rs of Tippecanoe County
> 43 S. Ct. 11, 263 US 19, 68 L. Ed. 140

36 Corpus Juris Secundum, Federal Courts, Sec. 240, states in pertinent parts, as follows:

> The judgment or decree of a state court must be final in order to be reviewable by the United States Supreme Court, and the test of finality, in this connection, is whether the record shows that the order of the state court has in fact fully adjudicated rights and that the adjudication is not subject to further review by a state court."

In order for a decision of a state court to be subject to review by the United States Supreme Court on the ground that a federal question is involved, it is necessary that such question should be real and substantial, and that a decision is essential t the issues presented in the case.

Lynch v People of New York ex rel Pierson
55 S. Ct. 16, 293 U.S. 52, 79 L. Ed. 191

Hamilton v Regents of University of California
55 S. Ct. 197, 293 US 245, 79 L. Ed. 343

It is usually sufficient and necessary that a federal question shall have been decided by the state court or at least necessarily involved in the judgment.

Fla. Durley v Mayo
76 S. Ct. 806, 351 U.S. 277, 100 L. Ed. 1178

People of State of New York ex rel Bryant v Zimmerman
49 S. Ct. 61, 278 U. S. 63, 75 L. Ed. 184

The United States Supreme Court may examine opinion of the state court to ascertain whether a federal question was raised and decided. Furthermore, a state court cannot, by resting its judgment on some ground of local or general law, defeat the appellate jurisdiction of the Supreme Court of the United States, in a case where a federal question wasso involved that its determination was necessary to the disposition of the issues, especially where the federal right or immunity which was set up or claimed would, if recognized and enforced require a judgment different from that actually rendered.

Natl. Assn. for Advancement of Colored People vs
State of Alabama ex rel Patterson

78 S. Ct. 1163, 357 U.S. 449, 2 L. Ed. 1488

Titus v Walleck (Ohio)
59 S. Ct. 557, 306 U.S. 282, 83 L. Ed. 653

It will be presumed that the state court based its decision on federal grounds, and the United States Supreme Court will take jurisdiction, if the independent state ground was not a substantial or sufficient one for the decision.

U. S. Williams v Kaiser, Mo.,
65 S. Ct. 363, 323 U.S. 471, 89 L. Ed. 398

U. S. ex rel Huge v Commonwealth of Pennsylvania
89 F. Supp. 636

The only power of the United States Supreme Court over state court judgments is to correct them to the extent that they incorrectly adjudge federal rights.

Herb v Pitcairn, Illinois
65 S. Ct. 459, 324 U.S. 117, 89 L. Ed. 789

Review by the United States Supreme Court of a decision of a state court is authorized if it is claimed that a state has, in violation of the Federal Constitution, deprived petitioner of life, liberty, or property without due process of law, or is attempting to do so, unless such claim is frivolous, unsubstantiated or contrary to the law as established by prior decisions of the Supreme Court.

Napue v People of State of Illinois
79 S. Ct. 1173, 360 U.S. 264, 3 L. Ed(2) 1217

Winters v People of state of New York
68 S. Ct. 665, 333 U.S. 507, 92 L. Ed. 840

Copperweld Steel Co. v Industrial Comm. of Ohio
65 S. Ct. 1006, 324 U.S. 780, 89 L. Ed. 1363

Buchalter v People of State of New York, N.Y.
63 S. Ct. 1129, 319 U.S. 427, 87 L. Ed. 1492

State of Ohio ex rel Bryant v Akron Metropolitan Park Dist.
50 S. Ct. 228, 281 U.S. 74, 74 L. Ed. 710

The controlling test with respect to the right of review is not in the form of a state law or its declared purpose, but is found in the operation and effect of the law as applied and enforced by the state

Malinski v People of State of New York
65 S. Ct. 781, 324 U.S.401, 89 L. Ed. 1029

In the instant cause, appellant seeks a review of the judgment of the Court of Appeals of Ohio, Eleventh District in Lake County in its Case No.6-133. Said judgment was entered on the 8th day of December, 1977 and in making its ruling said court misinterpreted Ohio Criminal Rule 16, titled Discovery and Inspection in a way to deprive the defendant of his constitutional right to a fair trial guaranteed to all accused by the provisions of the Fifth and Sixth Amendments of the Constitution of the United States, made applicable to the states by the Fourteenth Amendment of said Constitution

It may be suggested that these Criminal Rules merely deal with pleading and practice under state laws and hence are not reviewable by the United States Supreme Court. This view is without merit where a federal question is involved!

36 Corpus Juris Secundum, Federal Courts at Section 269, Page 740 considers this question and states as follows:

> "Ordinarily the United States Supreme Court may not review the decisions of state courts as to questions of state practice or procedure or the sufficiency, construction, etc., of pleadings; and this is the rule even though the action is brought under a federal statute."

> "On the other hand, when matters nominally of procedure are actually matters of substance which effect a federal right, the decision of the state court is subject to review. Whether a pleading sets up a sufficient right of action or defense grounded upon the Constitution or a law of the United States, is necessarily a question of federal law, and, where a cause coming from a state court presents that question, the Supreme Court must determine for itself the sufficiency of the allegations displaying the right or defense, and is not concluded by the view taken by the state court."

> "With respect to review by the Supreme Court of the United States, a state may choose the procedure it deems appropriate for the vindication of federal rights, but if the state court of last resort closes the door to any consideration of a claim of denial of a federal right, the question is not simply one of state procedure, and as discussed infra Section 274, where federal rights are involved, it is for the Supreme Court of the United States finally to determine whether failure to follow the procedure designed by the state for their protection constitutes a waiver of them."

(b)(v)

The Rules of Criminal Procedure of the State of Ohio whose validity here in question include:

Rule 16 (A)(B)(C)(E)(F)

and:

Section 4511.11 (A)(B)(C)(D) and (E), and,

Section 4511.12 of the Ohio Revised Code.

RULE 16 DISCOVERY AND INSPECTION

(A) Demand for discovery

Upon written request each party shall forthwith provide the discovery herein allowed. Motions for discovery shall certify that demand for discovery has been made and the discovery has not been provided.

(B) Disclosure of evidence by the prosecuting attorney

(1) Information subject to disclosure

(a) Statement of defendant or co-defendant. Upon motion of the defendant, the court shall order the prosecuting attorney to permit the defendant to inspect and copy or photograph any of the following which are available to, or within the possession, custody, or control of the state, the existence of which is known or by the exercise of due diligence may become known to the prosecuting attorney:

(i) Relevant written or recorded statements made by the defendant or co-defendant, or copies thereof;

(ii) Written summaries of any oral statement, or copies thereof, made by the defendant or co-defendant to a prosecuting attorney or any law enforcement officer;

(iii) Recorded testimony of the defendant or co-defendant before a grand jury.

(b) Defendant's prior record. Upon motion of the defendant the court shall order the prosecuting attorney to furnish defendant a copy of defendant's prior criminal record, which is available to or within the possession, custody or control of the state.

(c) Documents and tangible objects. Upon motion of the defendant the court shall order the prosecuting attorney to permit the defendant to inspect and copy or photograph books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, available to or within the possession, custody or control of the state, and which are material to the preparation of his defense, or are intended for use by the prosecuting attorney as evidence at the trial, or were obtained from or belong to the defendant.

(d) Reports of examination and tests. Upon motion of the defendant the court shall order the prosecuting attorney to permit the defendant to inspect and copy or photograph any results or reports of physical or mental examinations, and of scientific tests or experiments, made in connection with the particular case, or copies thereof, available to or within the possession, custody or control of the state, the existence of which is known or by the exercise of due diligence may become known to the prosecuting attorney.

(e) Witness names and addresses; record. Upon motion of the defendant, the court shall order the prosecuting attorney to furnish to the defendant a written list of the names and addresses of all witnesses whom the prosecuting attorney intends to call at trial, together with any record of prior felony convictions of any such witness, which record is within the knowledge of the prosecuting attorney. Names and addresses of witnesses shall not be subject to disclosure if the pro-

secuting attorney certifies to the court that to do so may subject the witness or others to physical or substantial economic harm or coercion. Where a motion for discovery of the names and addresses of witnesses has been made by a defendant, the prosecuting attorney may move the court to perpetuate the testimony of such witnesses in a hearing before the court, in which hearing the defendant shall have the right of cross-examination. A record of the witness' testimony shall be made and shall be admissible at trial as part of the state's case in chief, in the event the witness has become unavailable through no fault of the state.

(f) Disclosure of evidence favorable to defendant. Upon motion of the defendant before trial the court shall order the prosecuting attorney to disclose to counsel for the defendant all evidence, known or which may become known to the prosecuting attorney, favorable to the defendant and material either to guilt or punishment. The certification and the perpetuation provisions of subsection (B)(1)(e) apply to this subsection.

(g) In camera inspection of witness' statement. Upon completion of a witness' direct examination at trial, the court on motion of the defendant shall conduct an in camera inspection of the witness' written or recorded statement with the defense attorney and prosecuting attorney present and participating, to determine the existence of inconsistencies, if any, between the testimony of such witness and the prior statement.

If the court determines that inconsistencies exist, the statement shall be given to the defense attorney for use in cross-examination of the witness as to the inconsistencies.

If the court determines that inconsistencies do not exist the statement shall not be given to the defense attorney and he shall not be permitted to cross-examine or comment thereon.

Whenever the defense attorney is not given the entire statement, it shall be preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(2) Information not subject to disclosure. Except as provided in subsections (B)(1)(a), (b), (d), (f), and (g), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal documents made by the prosecuting attorney or his agents in connection with the investigation or prosecution of the case, or of statements made by witnesses or prospective witnesses to state agents.

(3) Grand jury transcripts. The discovery or inspection of recorded proceedings of a grand jury shall be governed by Rule 6(E) and subsection (B)(1)(a) of this rule.

(4) Witness list; no comment. The fact that a witness' name is on a list furnished under subsections (B)(1)(b) and (f), and that such witness is not called shall not be commented upon at the trial.

(C) Disclosure of evidence by the defendant

(1) Information subject to disclosure.

(a) Documents and tangible objects. If on request or motion the defendant obtains discovery under subsection (B)(1)(c), the court shall, upon motion of the prosecuting attorney order the defendant to permit the prosecuting attorney to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, available to or within the possession, custody or control of the defendant and which the defendant intends to introduce in evidence at the trial.

(b) Reports of examinations and tests. If on request or motion the defendant obtains discovery under subsection (B)(1)(d), the court shall, upon motion of the prosecuting attorney, order the defendant to permit the prosecuting attorney to inspect and copy or photograph any

results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, available to or within the possession or control of the defendant, and which the defendant intends to introduce in evidence at the trial, or which were prepared by a witness whom the defendant intends to call at the trial, when such results or reports relate to his testimony.

(c) Witness names and addresses. If on request or motion the defendant obtains discovery under subsection (B)(1)(e), the court shall, upon motion of the prosecuting attorney, order the defendant to furnish the prosecuting attorney a list of the names and addresses of the witnesses he intends to call at the trial. Where a motion for discovery of the names and addresses of witnesses has been made by the prosecuting attorney, the defendant may move the court to perpetuate the testimony of such witnesses in a hearing before the court in which hearing the prosecuting attorney shall have the right of cross-examination. A record of the witness' testimony shall be made and shall be admissible at trial as part of the defendant's case in chief in the event the witness has become unavailable through no fault of the defendant.

(d) In camera inspection of witness' statement. Upon completion of the direct examination, at trial, of a witness other than the defendant, the court on motion of the prosecuting attorney shall conduct an in camera inspection of the witness' written or recorded statement obtained by the defense attorney or his agents with the defense attorney and prosecuting attorney present and participating, to determine the existence of inconsistencies, if any, between the testimony of such witness and the prior statement.

If the court determines that inconsistencies exist the statement shall be given to the prosecuting attorney for use in cross-examination of the witness as to the inconsistencies.

If the court determines that inconsistencies do not exist the statement shall not be given to the prosecuting attorney, and he shall not be permitted to cross-examine or comment thereon.

Whenever the prosecuting attorney is not given the entire statement it shall be preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(2) Information not subject to disclosure. Except as provided in subsections (C)(1)(b) and (d), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal documents made by the defense attorney or his agents in connection with the investigation or defense of the case, or of statements made by witnesses or prospective witnesses to the defense attorney or his agents.

(3) Witness list; no comment. The fact that a witness' name is on a list furnished under subsection (C)(1)(c), and that the witness is not called shall not be commented upon at the trial.

(D) Continuing duty to disclose

If, subsequent to compliance with a request or order pursuant to this rule, and prior to or during trial, a party discovers additional matter which would have been subject to discovery or inspection under the original request or order, he shall promptly make such matter available for discovery or inspection, or notify the other party or his attorney or the court of the existence of the additional matter, in order to allow the court to modify its previous order, or to allow the other party to make an appropriate request for additional discovery or inspection.

(E) Regulation of discovery

(1) Protective orders. Upon a sufficient showing the court may at any time order that the discovery or inspection be denied, restricted or deferred, or make such other order as is appropriate. Upon motion by a party the court may permit a party to make such showing, or part of such showing, in the form of a written statement to be inspected by the judge alone. If the court enters an order granting relief following such a showing, the entire text of the party's statement shall be sealed and preserved in the records of the court to be made available to the appellate court in the event of an appeal.

(2) Time, place and manner of discovery and inspection. An order of the court granting relief under this rule shall specify the time, place and manner of making the discovery and inspection permitted, and may prescribe such terms and conditions as are just.

(3) Failure to comply. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection, grant a continuance, or prohibit the party from introducing in evidence the material not disclosed, or it may make such other order as it deems just under the circumstances.

(F) Time of motions

A defendant shall make his motion for discovery within twenty-one days after arraignment or seven days before the date of trial, whichever is earlier, or at such reasonable time later as the court may permit. The prosecuting attorney shall make his motion for discovery within seven days after defendant obtains discovery or three days before trial, whichever is earlier. The motion shall include all relief sought under this rule. A subsequent motion may be made only upon showing of cause why such motion would be in the interest of justice.

§ 4511.11 Uniformity of traffic control devices.

(A) Local authorities in their respective jurisdictions shall place and maintain traffic control devices in accordance with the department of transportation manual and specifications for a uniform system of traffic control devices, adopted under section 4511.09 of the Revised Code upon highways under their jurisdiction as are necessary to indicate and to carry out sections 4511.01 to 4511.76 and 4511.99 of the Revised Code, local traffic ordinances, or to regulate, warn, or guide traffic.

(B) The director of transportation may remove or require to be removed any traffic control device that does not conform to the manual and specifications for a uniform system of traffic control devices on the extensions of the state highway system within municipal corporations.

(C) No village shall place or maintain any traffic control signal upon an extension of the state highway system within such village without first obtaining the permission of the director. The director may revoke such permission and may remove or require to be removed any traffic control signal which has been erected without his permission on an extension of a state highway within a village, or which, if erected under a permit granted by the director, does not conform to the state manual and specifications, or which is not operated in accordance with the terms of the permit.

(D) All traffic control devices erected on a public road, street, or alley, shall conform to the state manual and specifications.

(E) No person, firm, or corporation shall sell or offer for sale to local authorities, and no local authority shall purchase or manufacture, any traffic control device which does not conform to the state manual and specifications except by permission of the director.

§ 4511.12 Obeying traffic control devices. (GC § 6307-12)

No pedestrian, driver of a vehicle, or operator of a streetcar or trackless trolley shall disobey the instructions of any traffic control device placed in accordance with sections 4511.01 to 4511.78, inclusive, and 4511.99 of the Revised Code, unless at the time otherwise directed by a police officer. When both traffic control signals and stop signs are erected at intersections, traffic shall be governed by the traffic control signal while it is in operation.

No provision of such sections for which signs are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official sign is not in proper position and sufficiently legible to be seen by an ordinarily observant person. Whenever a particular section does not state that signs are required, such section shall be effective even though no signs are erected or in place.

(c)

Questions presented by this appeal include the following:

1. Are Rules of Criminal Procedure promulgated by courts of the various and separable States reviewable by the Supreme Court of the United States to determine whether they are interpreted and applied in ways to deprive defendants of their constitutional right to a fair trial?

2. In the instant cause, was defendant-appellant denied his right to a fair trial when the trial court over the defendant's objection, refused to allow his motion for an order for pre-trial discovery?

3. Rule 16 of the Rules of Criminal Procedure for the State of Ohio provides generally for Discovery and Inspection by the parties. Does said Rule, by implication, allow the use of interrogatories to extract from the prosecuting attorney "all evidence known, or which may become known to the prosecuting attorney, favorable to the defendant and material either to guilt or punishment." as provided in said Rules at 16B(1)(f)?

4. Rule 16B(1)(f) of the Ohio Rules of Criminal Procedure specifically requires the prosecuting attorney to disclose to counsel for defendant any and all evidence known, or to become known, to the prosecutor, favorable to the defendant and material either to guilt or punishment. Does such duty place upon the prosecuting attorney a responsibility to insure the truthfulness of statements made by policemen?

5. How can the requirements of Rule 16B(1)(f) be enforced i.e. what prevents the prosecutor from making a general denial of the existence of any favorable evidence when such is not the case?

6. Rule 1B of the Ohio Rules of Criminal Procedure provides that the rules shall be construed and applied "to secure the fair, impartial, speedy and sure administration of justice, simplicity in procedure, and the elimination of unjustifiable expense and delay".

   Where, as here, the only testimony available to convict is that of the single arresting officer, is it prejudicial and reversible error to deny to the defendant an opportunity to question the arresting officer, under oath, prior to trial?

7. What penalty is applied to a police prosecutor when he refuses to reveal favorable evidence to counsel for the defendant?

8. Rule 16F of the Ohio Rules of Criminal Procedure provides the time for making a motion for an order for favorable evidence. Has a defendant acted "in time" as therein provided where he has commenced his discovery proceedings sixteen (16) days after arraignment and thereafter, following a Hearing and the passage of thirty-one (31) days while the Village of Waite Hill dallied in complying with the order of the Court, the defendant then supplements his earlier motion with a request for an order by the court to require the response to certain interrogatories "in the interest of justice" when said request for an order is filed with the court eleven (11) days prior to trial?

9. Does the requested motion of (8.) "relate back" to the time of the initiation of discovery sixteen (16) days after arraignment?

10. Is a radar speed measuring device utilized by police officials a traffic control device subject to the provisions of Section 4511.11 A-E of the Ohio Revised Code?

11. The General Assembly in enacting Section 4511.12 Ohio Revised Code makes unenforcible any and all charges relating to traffic where signs have not been posted by the local authorities pursuant to specifications in accordance with a uniform system of traffic control devices, adopted under section 4511.09 Ohio Revised Code. Do such provisions require that all traffic arrest citations state specifically the area of the alleged violation in order that an accused may avail himself of the benefits of the provisions of 4511.12 of the Revised Code?

12. Can one police officer safely operate his moving police car, observe a radar meter reading, identify accurately and correctly the automobile of the alleged traffic violator, and determine the location of the approaching vehicle at the time the speed determination is being made?

13. Is a defendant in a criminal proceeding, with or without counsel, entitled to all evidence favorable to him which is known, or may become known to the prosecuting attorney where such evidence is material either to his guilt or punishment?

14. In requesting favorable evidence, is a defense attorney required to rely solely upon the "offering" of the prosecuting attorney or may he ask questions or interrogatories relative thereto prior to trial?

(d) A statement of this case includes the following:

On October 21, 1976, appellant was cited by one, Sgt. William A. Schultz of the Waite Hill Village Police Department for allegedly driving a motor vehicle "on Markell Road" at 45 mph in a 25 mph zone.

On October 27, 1976, defendant-appellant was arraigned and he entered a plea of "not guilty".

On November 12, 1976, sixteen (16) days after arraignment, appellant commenced his action for discovery by filing a Motion to Require Plaintiff to make Definite and Certain.

On December 3, 1976, forty three (43) days after arraignment, the Court upon Hearing and in consideration of a Brief filed by the appellant, ordered the prosecutor to require the arresting officer to state "with particularity" the area on Markell where the alleged offense occurred.

On January 6, 1977, seventy-seven (77) days after arraignment, the Village of Waite Hill finally supplied to the Court and this appellant the sworn statement of the arresting officer.

On February 1, 1977, appellant renewed his discovery proceedings by filing a demand for response to certain interrogatories wherein was stated:

> "the interrogatories relate generally to the RESPONSE FOR A MORE DEFINITE STATEMENT filed earlier with this court".
>
> (capitals as written in the original)

On February 4, 1977, the Village of Waite Hill ob-

jected to each and every interrogatory and refused to respond thereto.

On February 11, 1977, the appellant filed his Motion for a Court Order to require the Village of Waite Hill to respond to the interrogatories aforesaid.

On February 22, 1977, the date of the trial, the Hon. Judge Hoose, over the stated objections of the defendant who cited his constitutional grounds, denied the Motion for a Court Order and directed the parties to trial forthwith. The defendant was found guilty and was fined $20.00 and costs.

On March 1, 1977, defendant-appellant filed his Notice of Appeal to the Court of Appeals, Eleventh Appellate District, Lake County, State of Ohio.

On November 21, 1977, the Court of Appeals, in a 2 to 1 decision announced its verdict and thereafter, on December 12, 1977, entered its Judgment Entry in its Journal.

On December 19, 1977, defendant-appellant filed his Notice of Appeal to the Supreme Court of the State of Ohio.

On January 10, 1978, defendant filed his Motion to Certify with the Supreme Court of the State of Ohio, who, on March 17, 1978, overruled defendant's motion to certify and sua sponte dismissed his appeal.

On April 14, 1978, the Supreme Court of the State of Ohio denied appellant's motion to reconsider.

On May 2, 1978, appellant filed his Notice of Appeal to the Supreme Court of the United States in the Supreme Court of the State of Ohio and thereafter, on

May 12, 1978, filed said Notice of Appeal with the Court of Appeals, Eleventh Appellate District, and with this Court.

On July 10, 1978, appellant's Application for an Extension of Time to Docket An Appeal was granted by this Court, extending the time therefor to September 11, 1978

(e)

This is an appeal from the Court of Appeals, Eleventh Appellate District, Lake County, State of Ohio. This appeal is taken from this court because the Supreme Court of the State of Ohio denied defendant's motion to certify, dismissed his appeal and denied defendant's motion to reconsider their earlier decisions. In the Court of Appeals, as in the trial court, the defendant stated the denial of his motion for an order to require the Village of Waite Hill to answer certain questions propounded by the defendant prior to trial denied to defendant favorable evidence to which defendant was entitled by virtue of the provisions of Criminal Rule 16 B1 (f). As a direct result of the denial of this action for pre-trial discovery, the defendant was denied a fair trial guaranteed to all accused by the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

36 Corpus Juris Secundum, Federal Courts, at Section 272, states in pertinent parts as follows:

> "An appeal is proper where the validity of a state statute, as construed by the state court, is drawn in question on the grounds of its being repugnant to the Federal Constitution and the decision of the state court is in favor of its validity."

It is suggested, for the consideration of this Court, that this rule is no less applicable, where as here, the controversy relates to a Rule of Criminal Procedure. See 36 Corpus Juris Secundum at Section 269, Page 740.

It is well settled that the Supreme Court of the United States may examine the opinions, the pleadings and otherwise search the record to determine whether a federal question was raised and decided. The opinion of the majority of the Court of Appeals in their Judgment shown on pages 16 and 17 of the Appendix avoided the federal issues raised in both the trial court and in the

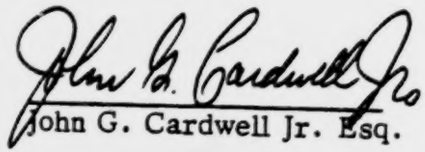
the Notice of Appeal to the Court of Appeals. This decision seems to be based upon a narrow interpretation of the Criminal Rules which denied to defendant his use of interrogatories as a means to an end--the discovery of evidence favorable to him, only because the Rules did not expressly state "interrogatories are appropriate requests for favorable evidence". This myoptic reasoning is neither substantial nor sufficient reason to deny to an accused his right to favorable evidence and a fair trial! Under such circumstances, the United States Supreme Court will presume the state court based its decision on federal grounds and will take jurisdiction.

There is no more substantial right protected by this Court than that of an accused's right to a fair trial. To deny to a defendant his pre-trial right to favorable evidence "known, or to become known to the prosecuting attorney" on some legal pretext serves only to emasculate our judicial concepts of fairness and justice and if this policy is allowed to continue it may well result in the conviction of innocent defendants in the interest of "speedy justice". This would be a travesty of justice and must not be allowed by this Court.

The instant case we consider only the rights of a defendant in the most minor of all criminal prosecutions, an alleged charge of driving twenty miles over the posted speed limit. This Court's decision in this matter will deeply influence the very roots of our judicial system. One need but ask ones self--Can any legal or social good be served by denying to any and all accused evidence beneficial to him known to the prosecuting attorney?

In the opinion of counsel for the defendant it would have seemed more just if the prosecuting attorney had insisted the court grant defendant's motion for discovery. This the learned prosecutor has not done.

Wherefore, Defendant and Appellant respectfully request that this Court accept jurisdiction of Defendant's appeal in the above-captioned matter and that it be docketed to require plenary consideration with briefs on the merits and oral argument for the questions herein presented.



John G. Cardwell Jr. Esq.

Attorney for Defendant
Appearing Pro Se

CERTIFICATION

The undersigned hereby certifies that three copies of the jurisdictional statement and appendix were personally delivered to the office of the prosecutor for the Village of Waite Hill, Timothy E. Levstik, at his office located at 38121 Euclid Avenue, Willoughby, Ohio.

Said instruments, in the first instance, were delivered on September 7, 1978.

Thereafter, on October 6, 1978, revised copies in due form were redelivered to Mr. Levstik.

The undersigned further states that all parties required to be served have been served.

John G. Cardwell Jr.

John G. Cardwell Jr.,
Attorney-at-Law
10245 Wisner Road
Kirtland, Ohio 44094
216-266-2581 256-8244

I, Timothy E. Levstik, prosecuting attorney for the Village of Waite Hill, hereby acknowledge having received three copies of the abovementioned revised jurisdictional statement and attached appendix.

Timothy E. Levstik

Timothy E. Levstik
Attorney-at-Law

SCHEDULE OF APPENDICES

A. Citation 2127 issued to appellant by the Village of Waite Hill

B. Motion to Make Definite and Certain

C. Judgment Entry, Hearing on Motion

D. Response for a More Definite Statement

E. Interrogatories Submitted by Defendant

F. Motion for a Court Order

G. Pretrial Proceedings

H. Judgment Entry, Case No. A-59712

I. Notice of Appeal to the Court of Appeals, Eleventh Appellate District, Lake County, Ohio, Case No. 6-133

J. Judgment Entry of the Court of Appeals, Eleventh Appellate District, Lake County, Ohio

K. Announcement of Decision of the Court of Appeals

L. Dissent of Hon. Judge Edwin T. Hofstetter, Court of Appeals, Eleventh Appellate District

M. Notice of Appeal to the Supreme Court of the State of Ohio

N. Motion to Certify the Record

O. Order of the Supreme Court of the State of Ohio, Overruling Appellant's Motion to Certify

P. Order of the Supreme Court of the State of Ohio, Dismissing Appellant's Appeal Sua Sponte

Q. Appellant's Motion to Reconsider

R. Order of the Supreme Court of the State of Ohio, Denial of Motion to Reconsider

S. Notice of Appeal to the Supreme Court of the United States

T. Motion for Extension of Time

U. Order Extending Time to Docket Appeal, No. A-11

WILLOUGHBY MUNICIPAL COURT,
LAKE COUNTY, OHIO
LAKE COUNTY JUVENILE COURT
STATE OF OHIO
X VILLAGE OF WAITE HILL

TICKET NUMBER No. 2127

CASE NO.

V.

NAME JOHN G CARDWELL JR

STREET 10345 WASAGE Rd

DOCKET NO.

CITY-ST. KIRTLAND O 44094

LICENSE NUMBER MC 958811 STATE OHIO

LICENSE ISSUED MO. 7-24 YR. 75 EXPIRES BIRTHDATE MO. 19

SOC. SEC. NO. 269-30-0272 MO. 7 DAY 23 YR. 25

SEX	HEIGHT	WEIGHT	HAIR	EYES	BIRTHDATE	LICENSE TYPE
M	6'00	175	MED	BRN		

LICENSE RESTRICTIONS: CORR. LENS, HAND CONT., POW. STEER., AUTO. DRIVE, DAYLITE ONLY

Oper. Chauf. Prob. T.P.

OTHER

TO DEFENDANT: COMPLAINT

256-6244

ON Thu 21-OCT YR 76 AT 7 55 P.M. YOU OPERATED PARKED WALKED

A VEHICLE PASS. CYCLE COMM. BUS YR. 73 MAKE VW BODY TYPE VAN

COLOR TAN LIC. GE 457 STATE OHIO

UPON A PUBLIC HIGHWAY, NAMELY MAGNELL Rd

AT/BETWEEN

TOWNSHIP VILLAGE IN THE CITY OF WAITE HILL IN LAKE COUNTY

(No.) AND STATE OF OHIO, AND COMMITTED THE FOLLOWING OFFENSE:

NATURE OF VIOLATION

X SPEED Unreasonable for conditions (45 MPH in a 35 MPH zone) Unable to stop in assured clear distance ahead. X Radar Electric Timer Mechanical Timer Moving Clock

IMPROPER TURN Left Right No signal Wrong lane U-Turn Prohibited

DISOBEYED TRAFFIC SIGNAL OR DEVICE Stop sign Red light Yield sign

IMPROPER PASSING At intersection Curve Hill No passing zone Cut in On right

IMPROPER LANE USAGE Change of course Cut out Lane straddling

FAILED TO YIELD RIGHT OF WAY FOLLOWING TOO CLOSELY OPERATED WITHOUT REGARD TO SAFETY (DESCRIBE BELOW)

IMPROPER PARKING Meter No. Overtime Night Prohibited Area Double Parking

DESCRIPTION OF OFFENSE

Speed

IN VIOLATION OF SEC. No. 473.6 SEC 4 LOCAL ORDINANCE OHIO REVISED CODE

Present Address | Home Phone | Bus. Phone | Name | Employment-Occupation

(continued on reverse side)

CONDITIONS

PAVEMENT Dry Wet Snow Ice

VISIBILITY Clear Cloudy Rain Snow Fog Dusk Night

TRAFFIC Crossing Oncoming Same direction Light Heavy Moderate None Pedestrian

AREA Rural Residential Business Industrial School

ROAD SURFACE Asphalt Concrete Gravel Dirt Width Brick Pt. No. of lanes Divided

ACCIDENT Arr. Rep No Yes No Almost caused Property damage Injury Fatal Vehicle Fixed object Pedestrian

YOU ARE SUMMONED AND ORDERED TO APPEAR AT THE

TO DEFENDANT: SUMMONS

No. 2127

WILLOUGHBY MUNICIPAL COURT
410 ERIE STREET
WILLOUGHBY, OHIO 44094

LAKE COUNTY JUVENILE COURT, COURT HOUSE
PAINESVILLE, OHIO 44077

COURT DATE: MONTH 10 DAY 27 YR 76 A.M. P.M.

The issuing-charging law enforcement officer states under the penalties of perjury and falsification that he has read the above complaint and that it is true.

IF YOU FAIL TO APPEAR AT THIS TIME AND PLACE YOU MAY BE ARRESTED. This summons served personally on the defendant on 10-21 YR 76

Sgt Wm. A Shultz
ISSUING-CHARGING LAW ENFORCEMENT OFFICER

DEFENDANT'S COPY

SEE REVERSE SIDE OF SUMMONS

WILLOUGHBY MUNICIPAL COURT
WILLOUGHBY, OHIO

Village of Waite Hill, Plaintiff	)	
vs	)	Case No. A-59712
John G. Cardwell Jr. Defendant	)	

MOTION TO REQUIRE PLAINTIFF MAKE DEFINITE AND CERTAIN

Now comes the defendant in subject cause who respectfully moves this court for an order requiring the Village of Waite Hill to definitely state and make certain the precise location of Markell Road whereupon defendant is alleged to have violated Section No. 1973-6 Section 4 of the codified ordinances of said Village as charged in Ticket No. 2127.

This motion seems appropriate in the light of the Brief accompanying this Motion.

John G. Cardwell Jr., Esq.
10245 Wisner Road
Kirtland, Ohio 44094

CERTIFICATION

The undersigned hereby certifies that on ____ day of November, 1976, the above motion and brief were sent to the office of Wayne Davis, attorney for the plaintiff, at his office at 38121 Euclid Avenue, in the City of Willoughby, Ohio, 44094.

John G. Cardwell Jr., Esq.

IN THE WILLOUGHBY MUNICIPAL COURT
CASE NO. A 59712

Waite Hill Plaintiff	)	
vs	)	JUDGMENT ENTRY
John G. Cardwell Defendant	)	

12/6/76 Hearing on Motion

Prosecution ordered to state with particularity the area on Markell Road where the offense occurred.

Filed December 1976

IT IS SO ORDERED

Martin J. Murphy
Judge

IN THE WILLOUGHBY MUNICIPAL COURT
LAKE COUNTY, OHIO

Village of Waite Hill Plaintiff	)	CASE NO. A-59712
vs	)	RESPONSE FOR A MORE
John G. Cardwell Defendant	)	DEFINITE STATEMENT

STATE OF OHIO)
LAKE COUNTY) SS.

Pursuant to this Court's Order, William A. Schultz, after being duly sworn says:

1. In October, 1976, he arrested Defendant going Westward on Markell Road within the Village of Waite Hill, Ohio;
2. That said Defendant stopped his vehicle on Markell Road approximately 547 feet West from a sign facing east on Markell Road indicating a curve on said road; that said officer indicated to Defendant to stop approximately 447 feet West of said sign; and said officer "clocked" or discovered Defendant's speed on Markell Road within said Village as Defendant rounded the curve on Markell Road due West of the aforedescribed sign indicating such curve.

Sgt. William A. Schultz

Sworn to and subscribed by William A. Schultz before me this 5th day of January, 1977.

Timothy E. Levstik, Esq.
Notary Public

WILLOUGHBY MUNICIPAL COURT
WILLOUGHBY, OHIO

VILLAGE OF WAITE HILL Plaintiff	)	Case No. A59712
vs	)	
JOHN G. CARDWELL JR. Defendant	)	

INTERROGATORIES

Now comes the defendant with certain interrogatories to be answered under oath by one Sgt. William A. Schultz of the Waite Hill Village Police Department. These interrogatories relate generally to the RESPONSE FOR A MORE DEFINITE STATEMENT filed earlier with this Court. Said responses are essential to the defendant in preparing his defense.

1. Please state your full name.
2. State the name of your employer.
3. State the time you have been employed by the Village of Waite Hill.
4. State where you were employed prior to your employment by Waite Hill.
5. State your position with the Waite Hill Police Department.
6. Have you been given any special training in the use of radar?
7. State the period of this training, by who administered and when completed.
8. On Thursday, October 21, 1976, at approximately 7:55 A.M., did you cite the driver of a 1973 VW van on ticket #2127?
9. At that time, what automobile were you driving?
10. State the date the speedometer of said vehicle was last checked for accuracy.

11. State the direction of your travel at the time you first visually observed the VW bus aforesaid.
12. What was the speed of your vehicle at the time noted in question 11?
13. On said October 21, 1976, was your vehicle equipped with a radar unit for the measurement of vehicular speed?
14. State the name of the manufacturer, model number, cost and date of purchase of this equipment.
15. State if your radar unit was operating as you traveled in the direction stated in response to question 11.
16. State if you changed your direction of travel after observing the vehicle of defendant.
17. State the reason for this change of direction.
18. If your answer to 16 was in the affirmative, state the exact location where you turned around.
19. State whether your vehicle was parked or moving at the time of the "clocking" alluded to in your sworn response for a more definite statement. If moving, state whether your vehicle was traveling in the same or opposite direction to that of defendant.
20. Let us now consider in more detail the sworn statement which was filed earlier with this Court:

    You stated that defendant "stopped his vehicle approximately 547 feet west of a sign facing east on Markell Road indicating a curve on that road", is that correct?
21. State whether this reported location of the stopping of defendant's vehicle was taken from a written arrest report made at the time the arrest was made.

22. If your response to 21 is in the negative, was such a report ever made and if so, when?
23. If such a report was made at any time, please supply defendant with a copy thereof.
24. State if your police arrest report states the point of measurement of defendant's speed i.e. "clocked" defendant "as defendant rounded the curve on Markell Road due west of the aforedescribed sign".
25. State when you determined this point of measurement? Was it on the day of the arrest or some time thereafter?
26. Describe how this determination was made.
27. State whether other persons were present at the time of the determination of the point of measurement and identify said persons.
28. Did you view any other automobile vehicles on Markell or Hobart Roads during the time measuring defendant's speed and the issuance of ticket 2127.
29. State if you recollect a vehicle passing the vehicle of defendant and your police car after you stopped behind the VW bus of defendant on Hobart Road.
30. State is you recall defendant looking at the radar unit mounted on the front seat of your vehicle and asking you if this was one of the new radar units which can measure vehicle travel rate going and coming toward the unit while the police car is moving.
31. If your response to 30 was in the affirmative, state your reply to that question.
32. State if you recall defendant stating he was not aware that Waite Hill Village had such a radar unit.
33. State what you said at that time.
34. Do you recollect telling the defendant that the unit described by you in response to question

14 was a new purchase of the Village?

Thank you for your time and cooperation in making a truthful reply to the above.

John G. Cardwell Jr.
Attorney-at-Law
256-8244 266-2581

CERTIFICATION

The undersigned hereby certifies that a copy of the above interrogatories were sent by regular U.S. Mail to the office of Timothy E. Levstik, Attorney-at-Law, at his office located at 38121 Euclid Avenue, Willoughby, Ohio.

Said mailing was made on January 31, 1977.

John G. Cardwell Jr., Esq.

WILLOUGHBY MUNICIPAL COURT
WILLOUGHBY, OHIO

VILLAGE OF WAITE HILL	)	
Plaintiff	)	
vs	)	Case No. A59712
JOHN G. CARDWELL JR.	)	
Defendant	)	

MOTION FOR A COURT ORDER

Pursuant to defendant's rights to discovery under the Criminal Rules, a demand for the response to certain interrogatories having been made on plaintiff on the first day of February, and plaintiff having refused to respond thereto, defendant, in compliance with CR 16A and 16B(f), moves for an order, in the interest of justice, directing plaintiff to answer said interrogatories upon his oath.

John G. Cardwell Jr.
Attorney-at-Law

PROOF OF SERVICE ON PLAINTIFF

This is to certify that a copy of the foregoing motion for a court order was sent to Timothy E. Levstik, attorney for the plaintiff, at his office at 38121 Euclid Avenue, Willoughby, Ohio 44094.

John G. Cardwell Jr. Esq.

Filed February 11, 1977

STATE OF OHIO)
COUNTY OF LAKE)

VILLAGE OF WAITE HILL)
vs) Case No. A59712
CARDWELL)

APPEARANCES

On behalf of the Village of Waite Hill, Tim Levstik
Case heard before the Honorable Richard A. Hoose
On behalf of the Defendant, John G. Cardwell Jr. Esq.

PROCEEDINGS

THE COURT: Motion for the Court Order is overruled. We will proceed with trial.

MR. CARDWELL: I object to that ruling, your Honor.

THE COURT: You certainly may. You certainly may. Your objection is noted. We will proceed with trial.

MR. CARDWELL: Thank you your Honor.

I, DENNIS J. VIDIC, Clerk of the Willoughby Municipal Court hereby certify that this is a true copy of the proceedings and testimony from a Hearing on a Motion prior to trial held in case Village of Waite Hill v John Cardwell, Case No. A-59712, February 22, 1977.

Dennis J. Vidic, Clerk
Willoughby Municipal Court

WILLOUGHBY MUNICIPAL COURT
4163 River Street
Willoughby, Ohio 44094

IN THE WILLOUGHBY MUNICIPAL COURT
CASE NO. A-59712

City of Waite Hill)
)
Plaintiff)
) JUDGMENT ENTRY
vs)
) Date October 27, 1976
John G. Cardwell Jr.)
)
Defendant)

Defendant appeared Constitutional rights and pleas explained.

Defendant entered a plea of not guilty.

Date February 22, 1977

Case tried

Finding: Guilty
Fine: $20.00
Costs: Defendant

Defendant given 20 days to file appeal

IT IS SO ORDERED _____
Richard C. Hoose, Judge

Certified by Dennis J. Vidic, Clerk
Willoughby Municipal Court
January 5, 1978

WILLOUGHBY MUNICIPAL COURT
WILLOUGHBY, OHIO

VILLAGE OF WAITE HILL	)	
Plaintiff	)	
vs	)	Case No. A-59712
JOHN G. CARDWELL JR.	)	
Defendant-Appellant	)	

NOTICE OF APPEAL

Notice is hereby given that the above named defendant hereby appeals to the Court of Appeals, Eleventh Appellate District, the finding of guilty entered in this action on the 22nd day of February, 1977.

The basis of this action is the refusal of the Municipal Court of Willoughby, Ohio, to issue a Court Order to the plaintiff requiring them to answer certain interrogatories propounded by defendant-appellant eleven days prior to trial of this cause.

The denial of defendant's Motion for a Court Order, made immediately prior to trial, denied to defendant his right to a fair trial in clear derogation of the provisions of the Fifth and Sixth Amendments of the Constitution of the United States, made applicable to the States by the Fourteenth Amendment of said Constitution and Article I Section 10 of the Constitution of the State of Ohio.

John G. Cardwell Jr.,
Attorney-at-Law

CERTIFICATION

This is to certify that a copy of the foregoing Notice of Appeal, was sent to Timothy E. Levstik, attorney for the plaintiff, at his office at 38121 Euclid Avenue, Willoughby, Ohio, 44094.

Said mailing was made on February 28, 1977.

John G. Cardwell Jr.

COURT OF APPEALS OF OHIO, ELEVENTH DISTRICT
COUNTY OF LAKE
COURT OF APPEALS CASE NO. 6-133

VILLAGE OF WAITE HILL	)	
Appellee	)	
vs	)	JUDGMENT ENTRY
JOHN G. CARDWELL JR.	)	
Appellant	)	

This cause came on to be heard upon the Record in the Trial Court, and was briefed and argued by counsel for the parties.

Upon consideration whereof, this Court finds no error prejudicial to the appellant and, therefore, the judgment of the Trial Court is affirmed. Each Assignment of Error was reviewed by the Court and disposed of as set forth in this Court's Opinion and Dissenting Opinion, of earlier date, which is incorporated herein by reference.

It is ordered that appellee recover of appellant the costs herein taxed.

This Court finds that there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Trial Court to carry this judgment into execution. A certified copy of this Entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions. Hofstetter, J., dissenting.

Robert E. Cook, Presiding
FOR THE COURT
Edwin T. Hofstetter(Dissenting)

I hereby certify that the foregoing is a true copy filed on 12/12/77 in 6-133 of 11th District Court of Appeals. Witness my signature and seal this 28th day of June, 1978.
By: Melvin S. Reed, Deputy Clerk

COURT OF APPEALS OF OHIO, ELEVENTH DISTRICT
COUNTY OF LAKE
COURT OF APPEALS CASE NO. 6-133

VILLAGE OF WAITE HILL	)	
Appellee	)	ANNOUNCEMENT
vs	)	OF
JOHN G. CARDWELL, JR.	)	DECISION
Appellant	)	

DATED: November 21, 1977

This cause came on to be heard upon the record in the Trial Court, and was briefed and argued by counsel for the parties. Upon consideration whereof, this Court finds no error prejudicial to the appellant and, therefore, the judgment of the Trial Court is affirmed. Each assignment of error was reviewed and upon review the following disposition was made:

This is an appeal from a judgment of the Municipal Court of Willoughby, Lake County, wherein the defendant-appellant was found guilty of a speeding violation, driving 45 miles per hour in a 25 mile per hour zone, and was fined $20.00 and costs.

The appellant did not comply with Appellate Rule 16(A)(2) which provides the brief of appellant shall contain "a statement of the Assignments of Error presented for review". However, we conclude from the contents of appellant's brief that the error complained of is that the Village of Waite Hill did not answer the interrogatories propounded by appellant. This Assignment of Error is without merit.

Criminal Rule 16(B) provides for disclosure of seven categories of information by the prosecuting attorney. However, the criminal rules do not give the defendant a right to propound interrogatories and we conclude the

defendant did not have this right.

Judgment affirmed. Hofstetter, J. dissenting.

JUDGE ALFRED E. DAHLING

COOK, P. J., Concurs

HOFSTETTER, J., Dissenting

Hofstetter, J. (Dissenting)

I respectfully dissent from the majority opinion.

We have a one-on-one confrontation between an arresting officer for the Village of Waite Hill and the defendant. It is axiomatic, although possibly seldom admitted, that a greater weight for truth and veracity is accorded a law enforcement official than is accorded defendant.

In the instant case the defendant timely filed the commencement of discovery proceedings under Criminal Rule 16, which, after hearing on the request, the Court ordered to be supplied. Believing that inaccuracies existed as to the points where the officer signaled him to stop and where stopping occurred, the defendant sought further information by filing of interrogatories. Admittedly, there is no specific rule that authorizes the filing of interrogatories in a criminal case. As pointed out though by the defendant at oral argument, a defendant is ill prepared to attack a one-on-one arrest, at time of trial, where expert testimony is required in the area of speed and distances, unless he has prior information in this regard from the prosecution. This is what Criminal Rule 16, Discovery and Inspection, is all about, and the purpose of the Criminal Rules is "to provide for the just determination of every criminal proceeding."

Discovery and inspection under the rule is for the benefit of the defendant. Similar disclosures cannot be had from the defendant by the State except within the limitations provided by Criminal Rule 16(C), and only when discovery has been obtained by the defendant.

The majority, in its opinion, simply states that Criminal Rule 16(B) provides for disclosure of seven

categories of information by the Prosecutor, and that interrogatories are not one of them.

In my opinion, Criminal Rule 16 was adopted to timely provide defendants with prosecutorial information to which an adequate defense can be made. In the alternative, if the discovery is informative and convincing enough, it may well cause the defendant to enter a plea of guilt, thus eliminating unnecessary trial delays and expense.

Criminal Rule 16(D) requires a continuing duty to disclose, by either party, which shall be done promptly, or requires that the other party be informed so that the other party may make an appropriate request for additional discovery or inspection.

The majority undoubtedly concludes that an interrogatory is not an appropriate request.

Although it is possible the record brought up on appeal is not completely adequate to demonstrate the appellant's broadly stated error, that is not the reason for the majority decision. Therefore, believing the record to be sufficient to demostrate the error, I would hold that the request for its answers to interrogatories should have been considered by the trial court as a request for continuing discovery, and that the trial court, in the interests of justice, should have ordered an appropriate response by the State to provide the defendant with the information he is entitled to have under the rule

I would reverse the order of the trial court and remand the cause for further proceedings consistent with this dissent.

Judge Edwin T. Hofstetter

COURT OF APPEALS OF OHIO, ELEVENTH DISTRICT
COUNTY OF LAKE
COURT OF APPEALS CASE NO. 6-133

VILLAGE OF WAITE HILL	)	
Plaintiff-Appellee	)	
vs	)	NOTICE OF APPEAL
JOHN G. CARDWELL JR.	)	
Defendant-Appellant	)	

The defendant-appellant in the above entitled action hereby gives notice of appeal to the Supreme Court of the State of Ohio from the judgment of the Court of Appeals of Ohio, Eleventh District entered on the 8th day of December, 1977, wherein said Court by a 2 to 1 decision found no error prejudicial to the appellant, and affirmed the judgment of the trial court.

This case involves a substantial constitutional question of great public interest relating to judicial interpretation of Criminal Rule 16, Discovery and Inspection. The interpretation of the trial court, made immediately prior to trial, and the interpretation of the majority of the Court of Appeals, denied to defendant responses to timely filed interrogatories thereby depriving the petitioner of his constitutional right to a fair trial guaranteed to all accused by the provisions of the Fifth and Sixth Amendments of the Constitution of the United States, made applicable to the States by the Fourteenth Amendment of said Constitution and Article I Section 10 of the Constitution of the State of Ohio.

Filed: December 19, 1977

John G. Cardwell Jr., Esq.
10245 Wisner Road
Kirtland, Ohio 44094

CERTIFICATION

This is to certify that a copy of the foregoing Notice of Appeal to the Supreme Court of the State of Ohio, was sent to Timothy E. Levstik, attorney for the appellee, at his office at 38121 Euclid Avenue, Willoughby, Ohio.

JGC

SUPREME COURT OF THE STATE OF OHIO
COUNTY OF FRANKLIN
STATE OF OHIO

VILLAGE OF WAITE HILL	)	
Plaintiff-Appellee	)	
vs	)	CASE NO. 78-39
JOHN G. CARDWELL JR.	)	
Defendant-Appellant	)	

MOTION TO CERTIFY THE RECORD

Appellant respectfully moves this Honorable Court for an Order directing the Court of Appeals of the Eleventh Appellate District, County of Lake, State of Ohio, to certify the record in Case No. 6-133 on the docket of said Court, to this Court for review and decision.

On the 8th day of December, 1977, said court of appeals rendered a judgment and final order in said cause against the appellant and in favor of the appellee wherein said court found no error prejudicial to the appellant and affirmed, by a 2 to 1 decision, the decision of the Willoughby Municipal Court in their Case No. 76-TRD-A-59712.

This cause and the questions involved herein involve a substantial constitutional question of great public interest relating to judicial interpretation of the Criminal Rules of Discovery and Inspection, as is more fully disclosed by the Memorandum in support of this Motion filed herewith, to which reference is made.

The record of the judgments and proceedings in the trial and appellate courts will show the courts erred in failing to order the arresting officer to answer certain interrogatories propounded by the appellant and this error was prejudicial to the appellant and denied to him his constitutional right to a fair trial.

John G. Cardwell Jr. Esq.

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO City of Columbus	)	1978 TERM To wit: March 17, 1978
Village of Waite Hill, Appellee vs John G. Cardwell, Jr., Appellant	)	No. 78-39 MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS FOR LAKE COUNTY TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

COSTS:
Motion Fee, $20.00, paid by John G. Cardwell, Jr.,

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and seal of the Court this 17th day of March, 1978.

Thomas L. Startzman, Clerk

Sam F. Adkins, Deputy

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO City of Columbus	)	1978 TERM To wit: March 17, 1978
Village of Waite Hill, Appellee vs John G. Cardwell, Jr., Appellant	)	No. 78-39 APPEAL FROM THE COURT OF APPEALS.. for Lake County

This cause, here on appeal as of right from the Court of Appeals for Lake County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that a copy of this entry be certified to the Clerk of the Court of Appeals for Lake County for entry.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and seal of the Court this 17th day of March, 1978

Thomas L. Startzman, Clerk

Sam F. Adkins, Deputy

THE SUPREME COURT OF THE STATE OF OHIO

Village of Waite Hill,	)	
Appellee	)	
vs	)	No. 78-39
John G. Cardwell, Jr.,	)	
Appellant	)	

MOTION TO RECONSIDER

Now comes the appellant who respectfully moves this Court reconsider its action in overruling appellant's Motion to Certify in the light of the Memorandum which accompanies this Motion.

The ruling here in question was rendered by this Court on March 17, 1978.

John G. Cardwell Jr., Esq.
10245 Wisner Road
Kirtland, Ohio

Appearing Pro Se

THE SUPREME COURT OF THE STATE OF OHIO

THE STATE OF OHIO	)	1978 TERM
City of Columbus	)	To wit: April 14, 1978
Village of Waite Hill,	)	No. 78-39
Appellee	)	
vs	)	REHEARING
John G. Cardwell, Jr.,	)	
Appellant	)	

It is ordered by the court that rehearing in this case is denied.

I, Thomas L. Startzman, Clerk of the Supreme Court of Ohio, certify that the foregoing entry was correctly copied from the Journal of this Court.

Witness my hand and seal of the Court this 14th day of April, 1978.

Thomas L. Startzman, Clerk

By Sam F. Adkins, Deputy

THE SUPREME COURT OF THE STATE OF OHIO
COLUMBUS, OHIO

THE STATE OF OHIO	)	Court of Appeals
	)	Case 6-133
Village of Waite Hill,	)	
Appellee,	)	1978 TERM
vs	)	Case 78-39
John G. Cardwell Jr.,	)	
Appellant	)	

NOTICE OF APPEAL

The defendant-appellant in the above entitled action hereby gives notice of appeal to the Supreme Court of the United States of America of the action of this court, which on March 17, 1978, overruled appellant's Motion for an Order directing the Court of Appeals for Lake County to Certify Its Record and the Court's action of the same date sua sponte dismissing defendant's appeal for the reason that no constitutional question exists.

Subsequent to the rulings aforesaid, defendant-appellant filed his Motion to Reconsider which was denied on April 14, 1978.

This case involves a substantial constitutional question relative to the Court's interpretation of Ohio's Rule of Criminal Procedure 16, Discovery and Inspection. The trial court denied defendant's Motion for an Order to require the Village of Waite Hill to respond prior to trial to certain interrogatories posed by defendant. This action prevented the defendant from preparing his defense and deprived appellant of his right to a fair trial guaranteed to all accused by the provisions of the Fifth and Sixth Amendments of the Constitution of the United States of America, made applicable to the States by the Fourteenth Amendment of said Constitution.

The Supreme Court of the State of Ohio, in condoning the unjust conduct of the trial court, has made an unconstitutional interpretation of Ohio Criminal Rule 16(B)1(f) which specifically requires pre-trial disclosure of all evidence favorable to defendant and material either to guilt or punishment.

John G. Cardwell Jr., Esq.

CERTIFICATION

This is to certify that a copy of the foregoing Notice of Appeal to the Supreme Court of the United States, was sent to Timothy E. Levstik, attorney for the Village of Waite Hill, at his office at 38121 Euclid Avenue, Willoughby, Ohio, 44094

Said mailing was made on April 25, 1978.

John G. Cardwell Jr., Esq.

Filed with the Supreme Court of the State of Ohio on May 2, 1978.

Filed with the Court of Appeals on May 12, 1978.

Filed with the Office of the Clerk, the Supreme Court of the United States of America on May 12, 1978.

THE SUPREME COURT OF THE UNITED STATES
WASHINGTON , D. C.

VILLAGE OF WAITE HILL) Appellee)	Court of Appeals 6-133
vs)	Supreme Court of Ohio.
JOHN G. CARDWELL, JR.,) Appellant)	Case No. 78-39

MOTION FOR EXTENSION OF TIME
ALLOWED TO DOCKET APPEAL

Now comes the appellant, who states:

1. On March 17, 1978, the Supreme Court of the State of Ohio, overruled appellant's motion to A motion to reconsider was filed by the appellant and denied by the Court on April 14, 1978. A Notice of Appeal to the Supreme Court of the United States was filed with the Supreme Court of Ohio on May 2, 1978, the Eleventh District Court of Appeals of the State of Ohio and this Court on May 12, 1978;

2. Pursuant to Rules of this Court, this cause should be docketed before July 13, 1978;

3. This appeal of a minor traffic conviction is addressed to issues far more significant than an allegation of operating a vehicle at 45 mph in a 25 mph zone. It seeks to question fundamental criminal procedures of the State of Ohio which obviate the accused's right to a fair trial guaranteed to all defendants by the Fifth and Sixth Amendments of the Constitution of the United States, made applicable to the States by the Fourteenth Amendment;

4. Defendant herein commenced his criminal discovery proceedings with a Motion for a Definite Statement which, upon Hearing, was allowed by the Willoughby Municipal Court. Thereafter, defendant received the appellee's response which defendant knew was false in certain respects and thereupon defendant sought to avail himself of the benefits of Criminal Rule 16(B)(f) of the Rules of Criminal Procedure for the State of Ohio. This Rule states as follows:

"(f) Disclosure of evidence favorable to defendant

Upon motion of the defendant before trial the court shall order the prosecutor to disclose to counsel for the defendant all evidence, known or which may become known to the prosecuting attorney, favorable to the defendant and material either to guilt or punishment. The certification and the perpetuation provisions of subsection (B)(1)(e) apply to this subsection."

5. Defendant prepared and submitted to the Village of Waite Hill, thirty-four (34) interrogatories, and upon the Village's refusal to respond thereto, the defendant, on February 11, 1977, filed a Motion for a Court Order relative to said interrogatories pursuant to Criminal Rule 16B(f) aforesaid;

6. On February 22, 1977, immediately prior to trial, the trial judge denied defendant's Motion for a Court Order and ordered the parties to trial over the stated objection of defendant. On March 1, 1977, the defendant having been found guilty, defendant filed his Notice of Appeal to the Court of Appeals,

Eleventh Appellate District of the State of Ohio;

7. The defendant-appellant practices law alone. There are no clerks or assistants and thus, if anything is to proceed, it must be done by the appellant. Here we have a case involving an attorney personally and it must of necessity, be of a priority second to clients' business affairs. It is this press of other business responsibilities coupled with this first-time introduction to a United States Supreme Court appeal which makes necessary this request for an extension of time in which defendant may docket this appeal;

8. Defendant respectfully requests a sixty-day extension, to September 13, 1978, to allow him time to docket this matter.

John G. Cardwell Jr., Esq.
Appearing Pro Se
10245 Wisner Road
Kirtland, Ohio, 44094
216-266-2581
216-256-8244

CERTIFICATION

The undersigned hereby certifies that the Motion for an Extension of Time and the accompanying Appendix was mailed on June 29, 1978, by regular U.S. Mail to Timothy E. Levstik, prosecutor for the Village of Waite Hill, at 38121 Euclid Avenue, Willoughby, Ohio 44094.

John G. Cardwell Jr., Esq.

SUPREME COURT OF THE UNITED STATES

No. A-11

JOHN G. CARDWELL JR.,

Appellant,

vs

VILLAGE OF WAITE HILL

ORDER

UPON CONSIDERATION of the application of counsel for the appellant,

IT IS ORDERED that the time for docketing an appeal in the above-entitled cause be, and the same is hereby, extended to and including September 11, 1978.

/s/ Potter Stewart
Associate Justice of the
Supreme Court of the
United States

Dated this 10th

day of July, 1978